

Chapter 3

Becoming Certified to Administer FHWA Projects

3.1 General Discussion

Certification Acceptance (CA) is a program in which the Federal Highway Administration (FHWA) delegates authority to the Montana Department of Transportation (MDT) for approving project development and construction administration. MDT has the option of delegating some or all of this authority, but not responsibility, to qualified local agencies. This procedure permits a local agency to retain more of the approval authority at the local level when developing FHWA assisted transportation projects. The CA program does not eliminate any project development procedures. Benefits of CA to a local agency include savings in time and money since the agency has the authority to develop, advertise, award, and manage its own projects.

CA requires local agencies to commit sufficient staff and other resources to project administration to ensure that all applicable state and federal requirements are met, and that the work can be accomplished efficiently. Once a local agency has been certified, the certification agreement remains in effect indefinitely unless rescinded due to lack of performance or modified by one of the parties.

A CA local agency has the option of requesting that MDT administer any given project.

3.2 Certification Acceptance Features

A certified agency is the approving authority for administering FHWA funded projects in all of the following project items for Urban Highway Program projects only:

- a. Location and design.
- b. Utility agreements.
- c. Railroad agreements.
- d. Standard consulting engineering agreements in accordance with MDT's approved consultant design procedures.
- e. Public hearings, findings, and orders in accordance with MDT's approved public involvement procedures.
- f. Plans, specifications, and estimates.
- g. Tied bids.
- h. Advertising periods of less than three weeks only in rare cases and must have justification.
- i. Advertisement and award of construction contracts.
- j. Construction administration.
- k. Construction material testing and testing personnel.

FHWA and MDT retain approval authority for the following:

- a. Authorization of FHWA funds.
- b. Environmental requirements for NEPA and ESA (Endangered Species Act) Section 106 of the National Historic Preservation Act of 1966 and Section 4(f).
- c. Right-of-way certification.
- d. Final Inspection of large and complex projects.
- e. Equal employment opportunity programs.
- f. Disadvantaged Business Enterprise (DBE).
- g. Nonstandard Consultant Agreements, when applicable.

3.3 Certification Acceptance Requirements

- a. Projects must be administered in accordance with this manual.
- b. Projects must be administered by a Professional Civil Engineer registered in the state of Montana who is either on staff as a public employee or is a contract employee designated as the agency's Engineer.
- c. The agency shall have sufficient expertise and capability to perform and supervise the design, environmental, PS&E, and construction-administration phases of the project.
- d. The local agency must have designated an official approving authority for all MDT-delegated project approvals. This authority (e.g., agency executive or policy body) must officially approve each project step for which it is the approving authority, as identified in the agreement. Local agency must have a full-time employee of the agency in responsible charge of each federal-aid project, including those that employ consultants for design and construction services.

3.4 Application for Certification Acceptance (CA)

A local agency wanting to operate under Certification Acceptance (CA) procedures must submit two copies of the Certification Acceptance Qualification Agreement and their Table of Organization to the MDT. A "Certification Acceptance Qualification Agreement" form is enclosed and is available through the MDT. After receiving the CA Qualification Agreement, the MDT will conduct a structured interview with the local agency administrators to determine whether the agency is capable of administering an FHWA-funded project. Areas of consideration will be a determination of past performance, current staffing, overall capability, and knowledge of FHWA and state requirements.

Based on the interview, the MDT will consider the following options:

- a. Permit full administration of all urban funded projects by the local agency;
- b. Allow limited local agency administration on a project-by-project basis;

- c. Allow local agency administration on projects up to a maximum dollar limit;
- d. Allow local agency administration of specific project phases (PE, IC, RW, CN or CE); or
- e. Deny Certification Acceptance.

The definitions of the various levels of CA approvals are outlined below:

Modified CA Status (Individual Project Approval)

Modified CA status refers to the local agency having administration/approval authority limited:

- To a specific urban project (Item b above);
- On a project-by-project basis (Item c above); or
- To a specific project phase or phases (Item d above).

Approval to implement an urban funded project under Modified CA status will require submittal of a plan developed by the agency and approved based upon review by the MDT. The project plan shall address how each of the following phases of the work will be performed.

- Financing approvals — accounting/billing capabilities.
- Development of plans, specifications, and estimates.
 - a. Consultant involvement, selection, and monitoring.
 - b. Approval of contract documents.
- Advertising and award or use of local agency forces.
- Contractor or local agency monitoring and documentation.
- Final acceptance and records review.

Full CA

Delegation of authority to an agency as authorization in the *Local Agency Guidelines* manual. The first project will be considered a trial service. A favorable performance management review (PMR) will confirm full CA status.

Probationary CA

Reduced delegation of authority of a CA agency to a project or phase of a project as the result of poor past performance as evidenced by either a PMR or Documentation Review. Continuation in a Probationary CA status, reinstating to Full CA status, or complete removal of CA status will be reviewed on a project-by-project basis as evidenced by a PMR or Documentation review.

If MDT becomes aware of a significant issue during project development or implementation, MDT will conduct an investigation and develop a plan for successful completion of the project that could include removing CA status of the local agency and MDT resuming oversight and approval authority through completion of the project and subsequent projects.

3.5 Certification Acceptance Compliance

The MDT will consult and advise the CA agency concerning the project-management procedures to be followed. The level of this assistance will depend on the nature of each project and the demonstrated capabilities of the local agency. In addition, the MDT will annually select projects for an in-depth procedural review. Typical procedural review questions and documents to be examined during this review are listed in Chapter 20.

The local agency may lose CA status or be placed on probationary CA if problems are identified during project management reviews or documentation reviews by the MDT staff or during:

- An audit by a Federal, State or Local Auditor, or any audit conducted under the Single Audit Act.
- During final project inspections.
- If the qualifications and experience of the agency staff are significantly downgraded.

If a vacancy occurs in the positions described in the CA Agreement as “Approving Authority,” the MDT shall be notified and may schedule an interview of the replacement person.

The loss of CA status and reinstatement conditions will be outlined in a letter from the MDT CTEP Engineer.

3.6 Appendices

3.61 Certification Acceptance Qualification Agreement

3.62 Certification Acceptance Interview Form

Appendix 3.61 Certification Acceptance Qualification Agreement

AGENCY _____ AGENCY NO. _____

The agency agrees to comply with the following requirements when developing all Federal Highway Administration (FHWA) projects under _____ CA status.

1. Adherence to the *Local Agency Guidelines* and all policies and procedures promulgated by the Montana Department of Transportation (MDT) which accomplish the policies and objectives set forth in Title 23, U.S. Code, Highways, and the regulations issued pursuant thereto.

2. The overall approval authorities and conditions will be as follows:

- a. The designs and environmental documents will be reviewed and approved by the following state of Montana registered Professional Civil Engineer.

Position Title Only

- b. The hearing's findings (if required) will be reviewed and approved by the following official or officials and conducted in accordance with MDT's approved procedures.

Position Title or Titles Only

- c. The contract plans, specifications and estimate of cost will be reviewed and approved by the following state of Montana registered Professional Engineer.

Position Title or Titles Only

- d. Agreements will be signed by the following responsible local official:

(1) Railroad _____

Position Title Only

(2) Utility _____

Position Title Only

(3) Consultant _____

Position Title Only

(4) Technical Services _____

Position Title Only

- e. The award of contract will be signed by the following responsible local official.

Position Title Only

- f. The Local Agency and any consultant(s) and/or contractor(s) it may employ will design the project to MDT Geometric Design Standard's for Urban and Developed Areas and to serve design year traffic.
- g. The contract administration will be supervised by the following state of Montana registered Professional Civil Engineer who is an employee of the local agency.

Position Title Only

- h. Construction administration and material sampling and testing will be accomplished in accordance with the MDT *Construction Manual* and the *Local Agency Guidelines*.
3. The agency agrees that they have the means to provide adequate expertise and will have support staff available to perform the functions being subdelegated. The support staff may include consultant or state services.
4. The agency agrees that the signature on each project prospectus and local agency agreement will be consistent with section 2 above.
5. The agency agrees that all projects implemented under Certification Acceptance shall be done on a cost reimbursement basis, and only federal-aid eligible project costs appropriately identified as STPU expenditures will be reimbursed by the State. Reimbursement for Federal-Aid project costs will be made only upon completion of the entire project by the Local Agency and acceptance of the project by MDT and FHWA.
6. All projects under Certification Acceptance shall be available for review by the FHWA and the state at any time and all project documents shall be retained and available for inspection during the plan development and construction stages and for a three-year period following acceptance of the project by MDT.
7. Approval of the local agency certification by the MDT may be rescinded at any time upon local agency request or if, in the opinion of the MDT, it is necessary to do so. The rescission may be applied to all or part of the programs or projects approved in the local agency certification.

Mayor or Chairman

Date

MONTANA DEPARTMENT OF TRANSPORTATION

Approved By:

(Insert Appropriate Staff)

Date

Reviewed for Legal Content: _____

Date

Appendix 3.62 Certification Acceptance Interview Form**Agency:** _____ **Date:** _____**Interview Conducted By:**

Agency Representatives:

Table of Organization

(Get copy from agency and review duties, requirements, and personnel currently filling.)

Function:**Position Responsible:**

Six-Year Transportation Improvement Program: _____

Selection of Annual Program: _____

Location/Design Approval: _____

Environmental Documents: _____

PS&E Approval: _____

Tied Bids: _____

Approval of Materials Sources: _____

Construction Administration: _____

Construction Inspection: _____

Acceptance Sampling/Test: _____

Independent Assurance Sampling/Test: _____

Change Orders: _____

Project Files: _____

EEO Interviews/Monitoring: _____

Training Goal Attainment: _____

DBE Compliance/Monitoring: _____

Consultants

For what areas does the agency expect to use consultants?

☐ Environmental
☐ Design
☐ PS&E Preparation
☐ Right-of-Way Appraisal
☐ Right-of-Way Yes _____ No _____ Negotiation
☐ Right-of-Way Yes _____ No _____ Relocation
☐ Construction Administration
☐ Construction Inspection
☐ Surveying
☐ Sampling and Testing

Does local agency have written procedures for the selection of consultants that are consistent with MDT's approved procedures? Yes ☐ No ☐

Comments: _____

If consultants are used, how will agency monitor and control the consultant's work?

Remind agency that they will be in control of the consultant's work and that EEO, DBE, and training should be done by agency.

Right-of-Way

Does the agency have procedures approved by MDT for:

Right-of-Way Acquisitions

Relocation

Procedures for Ad, Award, and Execution of Contract

Position Responsible for:

Approval to Advertise	_____
Prequalification of Bidders	_____
Award of Contract	_____
Execution of Contract	_____
Name of Legal Publication	_____

General Questions about Administration

Who decides on and approves deviations from design prior to submittal to the state for formal approval?

Describe ledger system:

Does the local agency have an acceptable accounting system and internal control policies, have sufficient resources to complete the work on time, have adequate and proper justification for the various rates, including Indirect Cost Rate charged to perform work, and have knowledge of FHWA's cost eligibility and documentation requirements?

Who will check pay rolls, etc.? _____

Describe materials testing and approval process:

Describe change order approval process:

Describe agency requirements for project diary and inspectors daily report keeping:

Describe agency process for approval of subcontractors:

How will agency handle administration of more than one contract at the same time?

How will agency handle inspection of several phases of project at same time (e.g., dirt work, electrical, paving, structure)?

How will agency respond if project engineer and/or inspector are unable to be on job site due to illness, etc.? Who will handle control of project if needed person cannot be there?

How does agency manage traffic control?

Are there written procedures for preconstruction conferences?

Does Agency Have These Necessary Manuals & Publications?

Local Agency Guidelines	Yes___	No___
AASHTO — Policy on Geometric Design of Highways and Streets	Yes___	No___
MDT Construction Manual	Yes___	No___
MDT Standard Specifications for Road & Bridge Construction	Yes___	No___
MDT Supplemental Specifications for Road & Bridge Construction	Yes___	No___
Standard Bid Item Table	Yes___	No___
MUTCD	Yes___	No___
MDT Road Design Manual	Yes___	No___
MDT Detailed Drawings	Yes___	No___
MDT Utility Manual	Yes___	No___
FHWA Real Estate Acquisition Guide for Local Public Agencies	Yes___	No___
MDT Hydraulics Manual	Yes___	No___
MDT Materials & Testing Manual	Yes___	No___
MDT Geometric Design Standards	Yes___	No___
MDT Public Involvement Handbook	Yes___	No___
MDT Consultant Design Manual	Yes___	No___
FHWA Division Office Environmental Procedures	Yes___	No___
FHWA Project Development Book	Yes___	No___
NHI Course Manual - Contract Administration Core Curriculum	Yes___	No___
Montana Public Works Standard Specifications	Yes___	No___
MDT Right-of-Way Manual (2 volumes)	Yes___	No___
MDT CADD Standards Manual	Yes___	No___
MDT Bridge Design Manual	Yes___	No___
AASHTO Pavement Design Guidelines	Yes___	No___
MDT Environmental Procedures Manual	Yes___	No___

Upcoming Federal Aid Projects

Scheduled to Begin

Summary

Action to be taken by agency in following areas:

Comments From Reviewers

Recommendation of Review

- ☐ Full administration by agency of all projects
- ☐ Administration by agency for:
 - ☐ Preliminary Engineering
 - ☐ Right-of-Way
 - ☐ Incidental Construction
 - ☐ Construction
 - ☐ Construction Engineering
- ☐ Administration by agency on a project-by-project basis
- ☐ Administration by agency for projects up to \$ _____
- ☐ Deny approval for certification acceptance
- ☐ Remove from certification acceptance status

Concurrence by (Insert Appropriate Title)

(Insert Appropriate Title) Date